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[Additional counsel appear on  
signature page]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

\*E-FILED - 1/12/06\*

IN RE NETOPIA, INC. SECURITIES  
LITIGATION

**CASE NO.: C 04-3364 RMW (PVT)  
And Related Cases**

**CLASS ACTION**

This Document Relates to:

All Actions

**REQUEST FOR CASE MANAGEMENT  
CONFERENCE AND [PROPOSED]  
ORDER**

**DATE:** February 3, 2006  
**TIME:** 10:30 a.m.  
**ASSIGNED TO:** Hon. Ronald M. Whyte  
**CTRM:** 6

1 **I. PROCEDURAL BACKGROUND**

2 On June 29, 2005, Plaintiffs filed their Consolidated Amended Complaint (the  
3 "Complaint"). On August 29, 2005, a Notice of Motion and Motion to Dismiss, or in the  
4 Alternative to Strike Allegations from Plaintiffs' Consolidated Amended Complaint was filed by  
5 Netopia, Inc. ("Netopia"), Alan B. Lefkof ("Lefkof"), and David A. Kadish ("Kadish"), and joined  
6 by Thomas A. Skoulis ("Skoulis") and William D. Baker ("Baker") (collectively, "Defendants").  
7 On September 6, 2005, Defendant Baker filed a Notice of Motion and Motion to Dismiss  
8 Allegations from Plaintiffs' Consolidated Amended Complaint. On October 13, 2005, Plaintiffs  
9 filed a Memorandum of Points and Authorities in Opposition to All Defendants' Motions to  
10 Dismiss and/or Strike. In the various motions to dismiss, none of the Defendants, Netopia, Lefkof,  
11 Baker or Skoulis disputed that the Complaint properly alleged violations of Sections 10(b) and 20(a)  
12 of the Securities Exchange Act of 1934 with respect to the revenue and earnings reported for the  
13 fourth quarter ended September 30, 2003 (first reported on November 5, 2003), attributable to a  
14 purported transaction between Netopia and a customer (ICC) concerning the School District of  
15 Philadelphia, Pennsylvania ("Philadelphia").

16 On October 24, 2005, Plaintiffs filed a Notice of Motion and Motion to Lift Discovery Stay  
17 with a Memorandum of Points and Authorities in Support Thereof (the "Discovery Motion").<sup>1</sup> By  
18 the Discovery Motion, Plaintiffs sought production of copies of the same documents that have been  
19 already produced pursuant to investigations conducted by U.S. Government agencies (*i.e.*, the SEC,  
20 the Office of the U.S. Attorney's Office, and OSHA) concerning Netopia, as well as the transcripts  
21 of any testimony provided in connection with these investigations. Plaintiffs asserted, *inter alia*,  
22 that notwithstanding the pendency of the various motions to dismiss, Plaintiffs were entitled to an  
23 order pursuant to 15 U.S.C. §78u-4(b)(3)(B) permitting that discovery because (i) as discussed  
24 above, Defendants Netopia, Lefkof, Baker and Skoulis did not dispute that the Complaint properly  
25 alleged violations of Sections 10(b) and 20(a) with respect to Philadelphia, so, regardless of the  
26 outcome of their pending motions to dismiss, this litigation would proceed and discovery would

27  
28 <sup>1</sup> Defendant Kadish was not named in the Discovery Motion.

1 occur and/or (ii) numerous Courts had held that the PSLRA's discovery stay provisions did not  
 2 apply to prevent the disclosure to Plaintiffs of information already produced in response to  
 3 investigations by governmental agencies.

4 By a December 15, 2005 Order, the Court, *inter alia*, sustained the sufficiency of the Section  
 5 10(b) claims against all Defendants (except Kadish), and sustained the sufficiency of the Section  
 6 20(a) claims against all Defendants. In its December 15, 2005 Order, the Court also granted  
 7 Defendants' motion to strike allegations concerning a pre-class period transaction, and required that  
 8 Plaintiffs replead the sustained claims in a complaint that was no longer than thirty-five (35) pages  
 9 within twenty (20) days. On January 3, 2006, Plaintiffs filed their Second Consolidated Amended  
 10 Complaint in accordance with the Court's December 15, 2005 Order.<sup>2</sup>

11 On January 3, 2006, Defendants Netopia and Lefkof filed an Opposition to Plaintiffs'  
 12 Motion to Lift Discovery Stay on Grounds of Mootness (the "Opposition").<sup>3</sup> In their Opposition,  
 13 Defendants Netopia and Lefkof proposed that Plaintiffs withdraw Plaintiffs' Motion because:

14 it is now clear that some portion of this case will proceed[.]. . . plaintiffs' motion to  
 15 lift the discovery stay is now moot [and] the most efficient course is for plaintiffs to  
 16 withdraw this motion, and properly serve discovery requests pursuant to the Federal  
 17 Rules of Civil Procedure.

18 Opposition at 3. Defendants Netopia, Lefkof, Baker and Skoulis, through their respective counsel,  
 19 subsequently confirmed in writing (on January 5, 2006 and January 6, 2006) to Plaintiffs' Counsel  
 20 that the PSLRA's discovery stay provisions did not operate to bar discovery in this litigation if  
 21 Plaintiffs' Motion was withdrawn, regardless of whether any motion to dismiss is filed. In reliance  
 22 upon these representations by Defendants' counsel, Plaintiffs intend to withdraw the Discovery  
 23 Motion.

24 Plaintiffs now seek a Case Management Conference in order to conduct full discovery in this  
 25 litigation.

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26 <sup>2</sup> On December 27, 2005, Defendants Netopia, Lefkof and Kadish moved for leave to file a  
 27 limited motion for reconsideration of the Court's December 15, 2005 Order, concerning only the  
 28 Court's denial of Defendants' motion to dismiss the Complaint's allegations relating to  
 misrepresentations about Netopia's revenue from Swisscom, A.G.

<sup>3</sup> Defendants Baker and Skoulis have not filed any opposition to the Discovery Motion.

## II. THE COURT SHOULD SET A CASE MANAGEMENT CONFERENCE

In the August 17, 2004 Order Setting Initial Case Management Conference, the Court scheduled a Case Management Conference to be held on December 17, 2004. In a December 14, 2004 Order, the Court rescheduled that Case Management Conference to July 1, 2005. The Case Management Conference was not held on July 1, 2005, as the motion to dismiss or strike briefing had not been completed, and the Case Management Conference has not been rescheduled.

Plaintiffs propose the following schedule:

Date	Event
01/27/06	Deadline for serving of initial disclosures, filing and serving of Case Management Statement/Rule 26(f) Report
<del>02/03/06</del> 2/10/06	Case Management Conference at 10:30 a.m.

## III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (a) set January 27, 2006 as the deadline for (i) serving of initial disclosures, and (ii) filing and serving of a Case Management Statement/Rule 26(f) Report, and (b) schedule a Case Management Conference for February 3, 2006 at 10:30 a.m.

Dated: January 9, 2006

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**Additional Counsel for Plaintiffs**

**PROPOSED ORDER**

1. By January 27, 2006, all parties must: (i) serve initial disclosures, and (ii) file and serve a Case Management Statement/Rule 26(f) Report.
2. The Case Management Conference is scheduled for February 3, 2006 at 10:30 a.m.

**IT IS SO ORDERED:**

DATED: 1/12, 2006

/S/ RONALD M. WHYTE  
HON. RONALD M. WHYTE  
U.S. DISTRICT COURT JUDGE



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8 **Attorneys for Defendants**

9 On January 9, 2006, I served the document(s) described as:

10 **REQUEST FOR CASE MANAGEMENT CONFERENCE AND [PROPOSED] ORDER**

11 by placing a true copy(ies) thereof enclosed in a sealed envelope(s) addressed as follows:

12 Jules Brody, Esq.  
13 Aaron Brody, Esq.  
14 Tzivia Brody, Esq.  
15 STULL, STULL & BRODY  
16 6 East 45th Street  
New York, NY 10017  
17 **Tel.: (212) 687-7230**  
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19 Marc A. Topaz, Esq.  
20 Richard A. Maniskas, Esq.  
21 Tamara Skvirsky, Esq.  
22 SCHIFFRIN & BARROWAY  
23 280 King of Prussia  
24 Radnor, PA 19087  
25 **Tel: (610) 667-7706**  
26 **Fax: (610) 667-7056**

21 **Attorneys for Plaintiffs**

22 I served the above document(s) as follows:

23 BY MAIL. I am familiar with the firm's practice of collection and processing correspondence  
24 for mailing. Under that practice it would be deposited with U.S. postal service on that same day with  
25 postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware  
26 that on motion of the party served, service is presumed invalid if postal cancellation date or postage  
27 meter date is more than one day after date of deposit for mailing in an affidavit.  
28

1 I further declare, pursuant to Civil L.R. 23-2, that on the date hereof I served a copy of the  
2 above-listed document(s) on the Securities Class Action Clearinghouse by electronic mail through the  
following electronic mail address provided by the Securities Class Action Clearinghouse:

3 **jcarlos@law.stanford.edu**

4 I declare that I am employed in the office of a member of the bar of this Court at whose direction  
5 the service was made.

6 I further declare under penalty of perjury under the laws of the United States that the above is  
true and correct.

7 Executed on January 9, 2006, at Los Angeles, California 90025.

8  
9  
10 /S/ LEITZA MOLINAR  
Leitza Molinar